

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

ROBERT LOUIS CARVER; ROBERT
LOUIS CARVER, II; JAMES LOWELL
DEMERS; LINCOLN FUNDS
INTERNATIONAL, INC., a Nevada
corporation; and PAROPES
CORPORATION, f/k/a BROOKSTONE
CAPITAL, INC., a Nevada corporation,

Defendants,

LINCOLN BIOTECH VENTURES, L.P.;
LINCOLN BIOTECH VENTURES II, L.P.;
LINCOLN BIOTECH VENTURES III,
L.P., and MacAUSLAN CAPITAL
PARTNERS, LLC,

Relief Defendants.

Case No. SACV 08-00627-CJC(RNBx)

**PRELIMINARY INJUNCTION
AND ORDERS: (1) FREEZING
ASSETS; (2) PROHIBITING THE
DESTRUCTION OF
DOCUMENTS; AND (3)
APPOINTING A PERMANENT
RECEIVER**

1 This matter came to be heard upon the *Ex Parte* Application of Plaintiff
2 Securities and Exchange Commission (“Commission”) for a Temporary Restraining
3 Order And Orders: (1) Freezing Assets, (2) Requiring Accountings, (3) Prohibiting
4 The Destruction Of Documents, (4) Expediting Discovery, and (5) Appointing a
5 Temporary Receiver, And Order to Show Cause Re Preliminary Injunction And
6 Appointment Of A Permanent Receiver (the “Application”).

7 The Court, having considered the Commission’s Complaint, the Application,
8 the supporting Memorandum of Points and Authorities, Declarations and Exhibits,
9 the Commission’s Reply Brief, and all other evidence and argument presented, finds
10 that:

11 **I. FINDINGS OF FACT**

12 a. The Commission presented evidence that from at least April 2004
13 continuing to the present, defendants have been engaged in a fraudulent scheme
14 that raised over \$21.8 million from about 400 investors, who are located
15 throughout the United States, through the sale of common stock and limited
16 partnership interests in a series of five unregistered offerings. (Bergstrom Dec.
17 ¶15a-e, Exs. 10-14, p. 67-284; ¶48a-e.)

18 b. The Commission asserts that in the course of two common stock
19 offerings in Brookstone Capital, Inc. (“BCI”) and Lincoln Funds International, Inc.
20 (“LFI”), defendants made several misrepresentations and omissions, including
21 failing to disclose the criminal history of defendant Robert L. Carver,
22 misrepresenting the timing of a potential initial public offering (“IPO”), and
23 making projections about the future price of the common stock. (Bergstrom Dec.
24 ¶16b, Ex. 16, p. 288; (Brown Dec. ¶8, Ex. 2, p. 607; Borunda Dec. ¶4, Ex. 1, p.
25 133.)

26 c. The Commission presented evidence that in the course of three limited
27 partnership offerings, defendants defrauded the partnerships by misusing and
28 misappropriating at least \$2.5 million of the investors’ funds. (Haack Dec. ¶9, Ex.

1 3, p. 8; ¶10, Ex. 4, p. 9-11.)

2 d. The Commission asserts that defendants BCI and LFI were the
3 general partners of the partnerships and the investment advisers for the
4 partnerships, and defendants breached their fiduciary duties to the partnerships
5 through their misuse of the funds' assets. (Bergstrom Dec. ¶24, Ex. 28, p. 360;
6 ¶25, Ex. 29, p. 367; ¶26, Ex. 30, p. 374.)

7 e. The Commission presented evidence that in the LFI offering which
8 commenced in January 2008, defendants failed to disclose that LFI is the successor
9 to BCI and that Carver was and is associated with both LFI and BCI. (Brown
10 Dec. ¶7, Ex. 1, pp. 138, 164-68, 181-84.)

11 f. Based on undisputed evidence presented by the Commission, it
12 appears that on June 3, 2008, defendant DeMers misappropriated \$2.9 million of
13 investors' funds by transferring that amount from accounts controlled by BCI, LFI
14 and affiliated entities to a new entity managed by him called MacAuslan Capital
15 Partners LLC. (Bergstrom Dec., ¶56, Ex. 44, pp. 470-517.)

16 II. **CONCLUSIONS OF LAW**

17 **Jurisdiction**

18 a. This Court has jurisdiction over the parties to, and the subject matter
19 of, this action pursuant to Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of
20 1933 ("Securities Act"), 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a); Sections 21(d)(1),
21 21(d)(3)(A), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange
22 Act"), 15 U.S.C. §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa; and Section 214 of the
23 Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. § 80b-14.

24 **Preliminary Injunction Standard**

25 b. Section 20(b) of the Securities Act and Section 21(d) of the Exchange
26 Act provide that the Commission may obtain a permanent injunction without a bond
27 upon a proper showing. 15 U.S.C. § 77t(b); 15 U.S.C. § 78u(d); *see SEC v. Wencke*,
28 622 F.2d 1363, 1375 (9th Cir. 1980). To obtain such relief, the Commission must

1 demonstrate: (1) a *prima facie* case that a violation of the securities laws has
2 occurred; and (2) a reasonable likelihood that the violation will be repeated. *See*
3 *SEC v. Unique Financial Concepts, Inc.*, 196 F.3d 1195, 1199 n.2 (11th Cir. 1999);
4 *SEC v. United Financial Group, Inc.*, 474 F.2d 354, 358-59 (9th Cir. 1973).

5 c. The Commission has established a *prima facie* case that a violation of
6 the securities laws has occurred and a reasonable likelihood that the violation will be
7 repeated.

8 d. Good cause exists to believe that defendants Robert Louis Carver
9 (“Carver”), Robert Louis Carver, II (“Carver II”), James Lowell DeMers
10 (“DeMers”), Paropes Corporation f/k/a Brookstone Capital, Inc. (“BCI”), and
11 Lincoln Funds International, Inc. (“LFI”) and each of them, have engaged in, are
12 engaging in, and are about to engage in transactions, acts, practices and courses of
13 business that constitute violations of Sections 5(a), 5(c) and 17(a) of the Securities
14 Act, 15 U.S.C. §§ 77e(a), 77e(c) and 77q(a), Section 10(b) of the Exchange Act, 15
15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections
16 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15
17 U.S.C. § 80b-6(1) and 80b-6(2).

18 e. Good cause exists to believe that defendants Carver, Carver II, and
19 DeMers and each of them, have engaged in, are engaging in, and are about to
20 engage in transactions, acts, practices and courses of business that constitute
21 violations of Section 15(a) Exchange Act, 15 U.S.C. § 78o(a).

22 f. Good cause exists to believe that defendants LFI and DeMers and each
23 of them, have engaged in, are engaging in, and are about to engage in transactions,
24 acts, practices and courses of business that constitute violations of Sections 206(4)
25 of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule 206(4)-8 thereunder, 17 C.F.R.
26 § 275.206(4)-8.

27 g. Good cause exists to believe that defendants will continue to engage in
28 such violations to the immediate and irreparable loss and damage to investors and to

1 the general public unless they are restrained and enjoined.

2 **Prima Facie Evidence of Section 5 Violations**

3 h. The common stock and limited partnership interests offered and sold
4 by defendants in BCI and LFI constitutes a security under the Securities Act and
5 Exchange Act. *SEC v. Edwards*, 540 U.S. 389, 393, 124 S.Ct. 892, 157 L.Ed.2d 813
6 (2004); *SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99, 66 S.Ct. 1100, 90 L.Ed.
7 1244 (1946).

8 i. Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a)
9 &77e(c), prohibit the unregistered offer and sale of securities in interstate
10 commerce, unless an exemption from registration applies. *SEC v. Phan*, 500 F.3d
11 895, 901-02 (9th Cir. 2007); *SEC v. Murphy*, 626 F.2d 633, 649 (9th Cir. 1980).
12 Section 5 operates as a strict liability statute. *SEC v. Holschuh*, 694 F.2d 130, 137
13 n.10 (7th Cir. 1982). A *prima facie* case of a Section 5 violation is established by
14 showing: (1) defendants, directly or indirectly, offered or sold securities; (2) no
15 registration was in effect or filed with the Commission for those securities; and (3)
16 interstate transportation or communication or the mails were used in connection
17 with the offer and sale. 15 U.S.C. §§ 77e(a) & 77e(c); *see SEC v. Phan*, 500 F.3d at
18 902.

19 j. In the present case, the Commission presented evidence that
20 defendants have violated and will continue to violate Section 5: (1) the common
21 stock and limited partnership interests are securities in the form of stock and
22 investment contracts; (2) defendants offer and sell them to investors through means
23 of interstate commerce; and (3) the offer and sale of the offerings is not registered
24 with the Commission. (See, e.g., Bergstrom Dec. ¶15c-e, Ex. 12, p. 161.)

25 k. Once the Commission establishes the *prima facie* elements of a
26 Section 5 violation, the defendants bear the burden of proving that an exemption
27 from registration applies. *SEC v. Ralston Purina Co.*, 346 U.S. 119, 126, 73 S.Ct.
28 981, 97 L.Ed. 1494 (1953); *Murphy*, 626 F.2d at 641. Defendants presented no

1 evidence that an exemption from registration applies to the offerings at issue.

2 **Prima Facie Evidence of Violations of the Anti-Fraud Provisions of the**
 3 **Securities Act and Exchange Act**

4 1. Section 17(a) of the Securities Act prohibits fraud in the offer and sale
 5 of securities. 15 U.S.C. § 77q(a). Similarly, Section 10(b) of the Exchange Act and
 6 Rule 10b-5 thereunder prohibit fraud in connection with the purchase or sale of
 7 securities. 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5.

8 m. These provisions require that the fraud concern a material fact. *Basic*
 9 *Inc. v. Levinson*, 485 U.S. 224, 231-32, 108 S.Ct. 978, 99 L.Ed.2d 194 (1988); *TSC*
 10 *Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 48 L.Ed.2d 757
 11 (1976). A fact is material if there is a substantial likelihood that a reasonable
 12 investor would consider it important in making an investment decision. *TSC Indus.*,
 13 426 U.S. at 449; *Murphy*, 626 F.2d at 653. The antifraud provisions impose “a duty
 14 to disclose material facts that are necessary to make disclosed statements, whether
 15 mandatory or volunteered, not misleading.” *SEC v. Fehn*, 97 F.3d 1276, 1290 n.12
 16 (9th Cir. 1996).

17 n. The Commission presented evidence that the defendants made material
 18 misrepresentations by falsely telling investors in the BCI and LFI offerings that the
 19 companies would soon undertake an IPO and that the resulting stock price would
 20 significantly increase. Misstatements regarding an impending IPO are material to a
 21 reasonable investor. *SEC v. Platinum Inv. Corp.*, 2006 WL 2707319, *1-2
 22 (S.D.N.Y. 2006); *SEC v. Hasho*, 784 F. Supp. 1059, 1106 (S.D.N.Y. 1992).

23 o. The Commission presented evidence that the defendants’ projections
 24 of the future price of the stock of BCI and LFI, which were made without any
 25 reasonable basis, were material. *See, e.g., SEC v. R.A. Holman & Co., Inc.*, 366
 26 F.2d 456, 458 (2d Cir. 1966); *SEC v. Bocchino*, No. 98 Civ. 7525, 2002 WL
 27 31528472, at *1 (S.D.N.Y. Nov. 8, 2002). Defendants did not present evidence of a
 28 reasonable basis for these projections.

1 p. The Commission presented evidence that the defendants' failure to
2 disclose Carver's criminal history and felony convictions was a material omission.
3 *SEC v. TLC Invs. and Trade Co.*, 179 F. Supp. 2d 1149, 1153 (C.D. Cal. 2001). The
4 Commission also presented evidence that the failure to disclose the relationship
5 between LFI and BCI was a material omission. *SEC v. Fehn*, 97 F.3d at 1290.
6 Defendants did not provide any evidence to the contrary.

7 q. Violations of Section 17(a)(1) of the Securities Act and Section 10(b)
8 of the Exchange Act and Rule 10b-5 thereunder require a showing of scienter.
9 *Aaron v. SEC*, 446 U.S. 680, 701-02, 100 S.Ct. 1945, 64 L.Ed.2d 611 (1980). The
10 Supreme Court has defined scienter as "a mental state embracing intent to deceive,
11 manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12, 96
12 S.Ct. 1375, 47 L.Ed.2d 668 (1976). In the Ninth Circuit, scienter may be
13 established by a showing of recklessness. *Hollinger v. Titan Capital Corp.*, 914
14 F.2d 1564, 1568-69 (9th Cir. 1990) (en banc).

15 r. The Commission presented evidence that Carver, Carver II, and
16 DeMers acted with scienter. For example, Carver controlled the information
17 disseminated to investors and drafted certain private placement memoranda and
18 sales scripts used by sales agents. (Brown Dec. ¶7, Ex. 1, p. 14; ¶8, Ex. 2, p. 586-
19 87, 592-603, 605, 607-09, 610.) This indicates that Carver either knew or was
20 reckless in not knowing that the information being provided to investors about the
21 upcoming IPO, the anticipated share price, and his expertise was false or
22 misleading.

23 s. Likewise, the Commission presented evidence that Carver II drafted
24 certain PPMs, approved sales scripts for the offerings, and was aware of the prior
25 regulatory orders issued against Carver and BCI. (Brown Dec. ¶7, Ex. 1, p. 14;
26 Brown Dec. ¶9, Ex. 3, p. 665.) This indicates that Carver II knew or was reckless in
27 not knowing that the representations made to the LFI and partnerships' investors
28 were false and misleading.

t. The Commission also presented evidence that DeMers knew that LFI did not have adequate books, that the company did not have audited financials, it had not filed a registration statement or retained key professionals necessary for a public offering, and there was no basis for the anticipated share price being represented to investors. (Brown Dec. ¶7, Ex. 1, p. 8, 10, 151-153; Pollack Dec., ¶5, p. 6.) These facts indicate that DeMers knew or was reckless in not knowing that the representations made to the LFI and partnerships' investors were false and misleading.

u. Defendants did not present any evidence to rebut the Commission's evidence regarding scienter.

Prima Facie Evidence of Investment Adviser Violations

v. An investment adviser is “as any person who, for compensation, engages in the business of advising others . . . as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.” 15 U.S.C. § 80b-2(a)(11). This definition includes a general partner of a fund or investment manager of a limited partnership who manages a fund’s investments for compensation.

Abrahamson v. Fleschner, 568 F.2d 862, 869-870 (2d Cir. 1977). In addition, individuals associated with an investment adviser entity can also be held liable under Section 206 where “the activities of the associated person cause him or her to meet the broad definition of ‘investment adviser.’” *See In the Matter of John J. Kenny*, SEC Rel. No. IA-2128, n. 54 (May 14, 2003).

w. The Commission presented evidence that LFI held itself out as being in the business of investment management and also received compensation of 35% as a “management fee” for managing the limited partnerships and that the Carvers and DeMers each exercised control over LFI and BCI. (Bergstrom Dec. ¶15c, Ex. 12, p. 177; 15d, Ex. 13, p. 209; 15e, Ex. 14, p. 255; Brown Dec. ¶7, Ex. 1, p. 414-415; Bergstrom Dec. ¶46, Ex. 42, p. 465.)

x. Section 206(1) of the Advisers Act prohibits an investment adviser

1 from employing “any device, scheme, or artifice to defraud any client or prospective
2 client.” Section 206(2) of the Advisers Act prohibits an investment adviser from
3 engaging “in any transaction, practice or course of business which operates as a
4 fraud or deceit upon any client or prospective client.” Section 206(1) requires a
5 showing of scienter, but Section 206(2) requires only negligence. *See, e.g.*,
6 *Steadman v. SEC*, 603 F.2d 1126, 1134 (5th Cir. 1979); *Vernazza v. SEC*, 327 F.3d
7 at 859.

8 y. Investment advisers owe a fiduciary duty to their clients to exercise the
9 utmost good faith, and to provide such clients with full and fair disclosure of all
10 material facts. *Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 17
11 (1979) (“section 206 established ‘federal fiduciary standards’ to govern the conduct
12 of investment advisers”).

13 z. The Commission presented evidence that LFI, the Carvers and DeMers
14 violated the Advisers Act by misappropriating at least \$2.5 million from the
15 partnerships. (Haack Dec. ¶10, Ex. 4, p. 4-9.) The Commission also presented
16 evidence that the Carvers used monies to make up trading losses in a brokerage
17 account, and Carver II also transferred \$1.8 in an undocumented “loan” to BCI,
18 which remains outstanding. (Brown Dec. ¶7, Ex. 1, p. 174-76.) The evidence also
19 reflects that DeMers transferred out all of the remaining cash from the bank
20 accounts of the partnerships in June 2008. (Bergstrom Dec. ¶56, Ex. 44, p. 470-
21 517.) These facts indicate that the Commission is likely to succeed on its claim that
22 defendants violated the Adviser’s Act.

23 aa. With regard to conduct occurring after September 10, 2007, Section
24 206(4) and Rule 206(4)-8 thereunder provide that it is an illegal practice for advisers
25 to: (1) make any untrue statement of a material fact or omit to state a material fact
26 necessary to make the statements made, in the light of the circumstances under
27 which they were made, not misleading, to any investor or prospective investor in a
28 pooled investment vehicle; or (2) otherwise defraud those investors or prospective

1 investors. 17 C.F.R. § 275.206(4)-8.

2 bb. The Commission presented undisputed evidence that LFI and DeMers
3 violated Section 206(4) and Rule 206(4)-8 thereunder by misrepresenting to
4 investors in the third partnership that 65% - 85% of their monies would be invested
5 in biotech companies. Instead, in June 2008, DeMers transferred off all of the
6 remaining investors' monies to a separate company he owns. (Bergstrom Dec. ¶56,
7 Ex. 44, p. 470-517.) These facts indicate that the Commission is likely to succeed
8 on its claim that defendants violated the Adviser's Act.

9 **Prima Facie Evidence of Broker-Dealer Registration Violations**

10 cc. Section 15(a)(1) of the Exchange Act require individuals who effect
11 nonexempt securities transactions to be associated with a registered broker-dealer.
12 A "broker" is "any person engaged in the business of effecting transactions in
13 securities for the accounts of others." 15 U.S.C. § 78c(a)(4). The solicitation of
14 investors to purchase securities, the receipt of transaction-related compensation, and
15 leading the sales effort are evidence of being engaged in the business of effecting
16 transactions in securities for the accounts of others. *See, e.g., SEC v. Hansen*, [1983
17 Transfer Binder] Fed. Sec. L. Rep. (CCH) 91,426 (S.D.N.Y. 1984); *Massachusetts*
18 *Fin. Svcs., Inc. v. SIPC*, 411 F. Supp. 411, 415 (D. Mass.).

19 dd. The Commission presented evidence that the Carvers and DeMers
20 violated Section 15(a)(1) by failing to associate with a registered broker-dealer at a
21 time when they acted as brokers by regularly participating in the solicitation of or
22 actual sale of securities. (Bergstrom Dec. ¶14, Ex. 9, p. 65-66) The Carvers and
23 DeMers did not present any evidence indicating that they qualify for exemptions
24 from registration. The Court finds that the Commission has demonstrated a high
25 probability of succeeding on its claim that the Carvers and DeMers violated Section
26 15(a) of the Exchange Act.

27 **Likelihood of Future Violations**

28 ee. Based on the evidence submitted regarding the extensive and long-

1 term violations that likely took place in the past and the defendants' history of
2 continuing those offerings despite the issuance of multiple orders by state regulatory
3 agencies, the Court finds that an inference of future violations is appropriate in this
4 case.

5 **Appointment of a Permanent Receiver, Continuation of the Asset Freeze**
6 **and Prohibiting the Destruction of Documents**

7 ff. Federal courts have inherent equitable authority to issue a variety of
8 ancillary relief measures in Commission injunctive actions including ordering asset
9 freezes, ordering accountings, appointing receivers, and prohibiting the destruction
10 of documents. *Wencke*, 622 F.2d at 1369; *SEC v. International Swiss Investments*
11 *Corp.*, 895 F.2d 1272, 1276 (9th Cir. 1990); *SEC v. Hickey*, 322 F.3d 1123, 1131
12 (9th Cir. 2003).

13 gg. Defendants have not objected to the appointment of a permanent
14 receiver or an order prohibiting the destruction of documents. In light of the
15 evidence set forth above and the defendants' non-opposition to such orders, it is
16 appropriate to appoint a permanent receiver and enter an order prohibiting the
17 destruction of documents.

18 hh. In addition, in light of the evidence of recent transfers of funds out of
19 corporate accounts and the defendants' propensity to transfer funds between a
20 variety of accounts, the Court finds that a continuation of the asset freeze is
21 warranted here. Defendants Carver, Carver II and DeMers have failed to make an
22 appropriate showing of the need for the freeze to be lifted. The Court will consider
23 lowering the amount frozen for necessary and reasonable living expenses and
24 reasonable attorneys' fees upon good cause shown by application to the Court with
25 notice to and an opportunity for the Commission to be heard.

26 **III. ORDER**

27 a. IT IS HEREBY ORDERED that the Commission's request for
28 preliminary injunction and orders: (1) Freezing Assets, (2) Prohibiting The

1 Destruction Of Documents, and (3) Appointing A Permanent Receiver is
2 GRANTED.

3 b. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver, Carver
4 II, and DeMers, and their directors, officers, agents, trustees, servants, employees,
5 attorneys, accountants, subsidiaries, and affiliates, and those persons in active
6 concert or participation with any of them, who receive actual notice of this Order,
7 by personal service or otherwise, and each of them, be and hereby are preliminarily
8 restrained and enjoined from, directly or indirectly, making use of any means or
9 instruments of transportation or communication in interstate commerce or of the
10 mails, to sell, to offer to sell, or to offer to buy any security, or carrying or causing
11 any security to be carried through the mails or in interstate commerce, by any means
12 or instruments of transportation, for the purpose of sale or delivery after sale, unless
13 a registration statement is in effect as to such security, in violation of Sections 5(a)
14 and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and 77e(c).

15 c. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver, Carver
16 II, and DeMers, and their officers, agents, servants, employees, attorneys,
17 subsidiaries and affiliates, and those persons in active concert or participation with
18 any of them, who receive actual notice of this Order, by personal service or
19 otherwise, and each of them, be and hereby are preliminarily restrained and enjoined
20 from, directly or indirectly, in the offer or sale of any securities, by the use of any
21 means or instruments of transportation or communication in interstate commerce or
22 by use of the mails:

23 i. employing any device, scheme or artifice to defraud;
24 ii. obtaining money or property by means of any untrue
25 statement of a material fact or any omission to state a material fact necessary in
26 order to make the statements made, in light of the circumstances under which they
27 were made, not misleading; or
28 iii. engaging in any transaction, practice, or course of

business which operates or would operate as a fraud or deceit upon the purchaser; in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

d. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver, Carver II, and DeMers, and their officers, agents, servants, employees, attorneys, subsidiaries and affiliates, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange:

- i. employing any device, scheme or artifice to defraud;

ii. making any untrue statement of a material fact or omitting to

state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

iii. engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

in violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

e. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver,

Carver II, and DeMers, and their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of this Order, by personal service or otherwise, and each of them, be and hereby are preliminarily restrained and enjoined from, by the use of the mails or any means or instrumentality of interstate commerce, directly or indirectly:

- i. employing any device, scheme, or artifice to defraud any client or prospective client;

- ii. engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

1 in violation of Sections 206(1) and (2) of the Advisers Act, 15 U.S.C. § 80b-6(1)
2 and (2).

3 f. IT IS FURTHER ORDERED that defendants LFI and DeMers, and
4 their officers, agents, servants, employees, attorneys, and those persons in active
5 concert or participation with any of them, who receive actual notice of this Order,
6 by personal service or otherwise, and each of them, be and hereby are preliminarily
7 restrained and enjoined from, directly or indirectly by the use of the mails or any
8 means or instrumentality of interstate commerce:

9 i. making any untrue statement of a material fact or omitting to
10 state a material fact necessary to make the statements made, in the light of the
11 circumstances under which they were made, not misleading, to any investor or
12 prospective investor in a pooled investment vehicle;

13 ii. engaging in any act, practice, or course of business that is
14 fraudulent, deceptive, or manipulative with respect to any investor or prospective
15 investor in a pooled investment vehicle;

16 in violation of Section 206(4) of the Advisers Act, 15 U.S.C. § 80b-6(4), and Rule
17 206(4)-8 thereunder, 17 C.F.R. § 275.206(4)-8.

18 g. IT IS FURTHER ORDERED that, except as otherwise ordered by this
19 Court, defendants BCI, LFI, Carver, Carver II, and DeMers, and relief defendants
20 Lincoln Biotech Ventures, LP, Lincoln Biotech Ventures II, LP Lincoln Biotech
21 Ventures III, LP, and MacAuslan Capital Partners, LLC (collectively the “Relief
22 Defendants”), and their officers, agents, servants, employees, attorneys,
23 subsidiaries and affiliates, and those persons in active concert or participation with
24 any of them, who receive actual notice of this Order, by personal service or
25 otherwise, and each of them, be and hereby are preliminarily restrained and
26 enjoined from, directly or indirectly:

27 i. transferring, assigning, selling, hypothecating, changing,
28 wasting, dissipating, converting, concealing, encumbering, or otherwise disposing

of, in any manner, any funds, assets, securities, claims, or other real or personal property, wherever located, of defendants BCI, LFI, Carver, Carver II, and DeMers, and Relief Defendants, and their subsidiaries or affiliates, owned by, controlled by, managed by or in the possession or custody of any of them;

ii. transferring, assigning, selling, hypothecating, encumbering, or otherwise disposing of any securities, including, but not limited to, any investment contracts or other securities of defendants BCI, LFI, Carver, Carver II, and DeMers and Relief Defendants or any of their subsidiaries or affiliates.

h. IT IS FURTHER ORDERED that, except as otherwise ordered by this Court, an immediate freeze shall be placed on all monies and assets (with an allowance for necessary and reasonable living expenses to be granted only upon good cause shown by application to the Court with notice to and an opportunity for the Commission to be heard) in all accounts at any bank, financial institution or brokerage firm (including any futures commission merchant), all certificates of deposit, and other funds or assets, held in the name of, for the benefit of, or over which account authority is held by BCI, LFI, Carver, Carver II, DeMers and the Relief Defendants or any entity affiliated with any of them, including, but not limited to, the accounts set forth below:

Bank	Account Name	Account Number
Banc of America Investment Services, Inc.	Robert Louis Carver, II	Unknown
Bank of America	360FX, LLC	501000368681
Bank of America	Brookstone Biotech Ventures LP	004968413573
Bank of America	Brookstone Biotech Ventures II LP	004969455459
Bank of America	Brookstone Capital, Inc.	004964920714
Bank of America	Brookstone Capital, Inc.	004968193916

1	Bank of America	Brookstone Quantitative Equity Investments, LLC a/k/a Lincoln Strategic Equities LLC	004964976373
2			
3			
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5	Bank of America	LFI Securities LLC	501000368584
6	Bank of America	Lincoln Funds International, Inc	005012312930
7			
8	Bank of America	Lincoln Funds International, Inc. Payroll Account	005010343435
9			
10	Bank of America	Lincoln Funds International, Inc.	005010343433
11			
12	Bank of America	Lincoln Funds International, Inc.	005012314433
13			
14	Bank of America	Lincoln Futures, LLC	501000388507
15	Bank of America	Lincoln Futures, LLC	501000368597
16	Bank of America	Lincoln Globex, LLC	501000369059
17	Bank of America	Mymajade Partners (James DeMers)	
18			
19	Bank of America	Priority Printing	004968393059
20	Bank of America	Robert Louis Carver, Sr.	0690604113
21	Bank of America	South Bell Communications	004968393046
22	Bank of America	United Marketing	004968393033
23	Bank of America	Xirtrix Gaming Technologies	004964920141
24	Bank of North Las Vegas	BBV Holdings LLC	130001290
25	Bank of North Las Vegas	BBV Holdings LLC	170002257
26	Bank of North Las Vegas	BBVII Holdings LLC	130000854
27	Bank of North Las Vegas	BBVII Holdings LLC	170002240
28			

1	Bank of North Las Vegas	Lincoln Biotech Ventures LP	170002455
2	Bank of North Las Vegas	Lincoln Biotech Ventures II LP	170002463
3			
4	Bank of North Las Vegas	Lincoln Biotech Ventures III LP	170002422
5			
6	Bank of North Las Vegas	LFI Holdings LLC	170002265
7	Bank of North Las Vegas	LFI Holdings LLC	170002232
8	California Bank & Trust	MacAuslan Capital Partners	
9	Commercial Bank of California	MacAuslan Capital Partners	1306356
10			
11	Commercial Bank of California	MacAuslan Capital Partners	1602994
12			
13	E*Trade Securities LLC	Robert Louis Carver, Sr.	65013357
14	MF Global, Inc.	Lincoln Funds International, Inc. Trading Account	#E D16 9041 79002
15			
16	Penson Financial Services Transcend Capital	Brookstone Biotech Ventures LP Brokerage Account	41212044
17			
18	Penson Financial Services Transcend Capital	Brookstone Quantitative Equity Investment LLC	41212085
19			
20	Penson Financial Services Transcend Capital	Brookstone Capital, Inc.	41211913
21			
22	Washington Mutual	Velocity Capital	1884177734
23	Bank of America	James DeMers	0694704062
24	Wells Fargo Bank	James DeMers	8339117916
25	Unknown	Lincoln Strategic Equities, LLC	Unknown
26			
27	Unknown	World Gaming Corporation	Unknown
28			

Unknown	Venture Direct	Unknown
Unknown	Intervest Ventures	Unknown
Ameritrade	Robert L. Carver & Kathy L. Carver JT Ten	144-648144

i. IT IS FURTHER ORDERED that James Donell is appointed permanent receiver of defendants BCI and LFI and relief defendants Lincoln Biotech Ventures, LP, Lincoln Biotech Ventures II, LP Lincoln Biotech Ventures III, LP (collectively, the “Lincoln Entities”), and their subsidiaries and affiliates, with full powers of an equity receiver, including, but not limited to, full power over all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other property belonging to, being managed by or in the possession of or control of BCI, LFI, and the Lincoln Entities, and their subsidiaries and affiliates. and that such receiver is immediately authorized, empowered and directed:

i. to have access to and to collect and take custody, control, possession, and charge of all funds, assets, collateral, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, papers and other real or personal property, wherever located, of or managed by BCI, LFI, and the Lincoln Entities and their subsidiaries and affiliates, with full power to sue, foreclose, marshal, collect, receive, and take into possession all such property;

ii. to have control of, and to be added as the sole authorized signatory for, all accounts of the entities in receivership, including all accounts at any bank, title company, escrow agent, financial institution or brokerage firm (including any futures commission merchant) which has possession, custody or control of any assets or funds of BCI, LFI, and the Lincoln Entities, and their subsidiaries and affiliates, or which maintains accounts over which BCI, LFI, and the Lincoln Entities and any of their employees or agents have signatory authority;

iii. to conduct such investigation and discovery as may be necessary to locate and account for all of the assets of or managed by BCI, LFI, and the Lincoln Entities, and their subsidiaries and affiliates, and to engage and employ attorneys, accountants and other persons to assist in such investigation and discovery;

iv. to take such action as is necessary and appropriate to preserve and take control of and to prevent the dissipation, concealment, or disposition of any assets of or managed by BCI, LFI, the Lincoln Entities, and their subsidiaries and affiliates;

v. to make an accounting, as soon as practicable, to this Court and the Commission of the assets and financial condition of BCI, LFI, and the Lincoln Entities, and to file the accounting with the Court and deliver copies thereof to all parties;

vi. to make such payments and disbursements from the funds and assets taken into custody, control, and possession or thereafter received by him or her, and to incur, or authorize the making of, such agreements as may be necessary and advisable in discharging his or her duties as temporary receiver;

vii. to employ attorneys, accountants and others to investigate and, where appropriate, to institute, pursue, and prosecute all claims and causes of action of whatever kind and nature which may now or hereafter exist as a result of the activities of present or past employees or agents of BCI, LFI, and the Lincoln Entities, and their subsidiaries and affiliates; and

viii. to have access to and monitor all mail of the entities in receivership in order to review such mail which he or she deems relates to their business and the discharging of his or her duties as temporary receiver.

j. IT IS FURTHER ORDERED that defendants BCI, LFI, the Lincoln Entities, and their subsidiaries and affiliates, including all of the other entities in receivership, and their officers, agents, servants, employees and attorneys, and any

1 other persons who are in custody, possession or control of any assets, collateral,
2 books, records, papers or other property of or managed by any of the entities in
3 receivership, shall forthwith give access to and control of such property to the
4 permanent receiver.

5 k. IT IS FURTHER ORDERED that no officer, agent, servant,
6 employee, or attorney of BCI, LFI, and the Lincoln Entities, shall take any action
7 or purport to take any action, in the name of or on behalf of BCI, LFI, and the
8 Lincoln Entities, without the written consent of the permanent receiver or order of
9 this Court.

10 1. IT IS FURTHER ORDERED that, except by leave of this Court,
11 during the pendency of this receivership, all clients, investors, trust beneficiaries,
12 note holders, creditors, claimants, lessors, consultant groups and all other persons
13 or entities seeking relief of any kind, in law or in equity, from BCI, LFI, and the
14 Lincoln Entities, or their subsidiaries or affiliates, and all persons acting on behalf
15 of any such investor, trust beneficiary, note holder, creditor, claimant, lessor,
16 consultant group or other person, including sheriffs, marshals, servants, agents,
17 employees, and attorneys, are hereby restrained and enjoined from, directly or
18 indirectly, with respect to these persons and entities:

19 i. commencing, prosecuting, continuing or enforcing any suit or
20 proceeding (other than the present action by the Commission) against any of them;

21 ii. using self-help or executing or issuing or causing the execution
22 or issuance of any court attachment, subpoena, replevin, execution or other process
23 for the purpose of impounding or taking possession of or interfering with or
24 creating or enforcing a lien upon any property or property interests owned by or in
25 the possession of BCI, LFI, and the Lincoln Entities, and

26 iii. doing any act or thing whatsoever to interfere with taking
27 control, possession or management by the permanent receiver appointed hereunder
28 of the property and assets owned, controlled or managed by or in the possession of

1 BCI, LFI, and the Lincoln Entities, or in any way to interfere with or harass the
2 permanent receiver or his or her attorneys, accountants, employees or agents or to
3 interfere in any manner with the discharge of the permanent receiver's duties and
4 responsibilities hereunder.

5 m. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver,
6 Carver II, DeMers, and the Lincoln Entities, and their subsidiaries, affiliates,
7 officers, agents, servants, employees and attorneys, shall cooperate with and assist
8 the permanent receiver and shall take no action, directly or indirectly, to hinder,
9 obstruct, or otherwise interfere with the permanent receiver or his or her attorneys,
10 accountants, employees or agents, in the conduct of the permanent receiver's duties
11 or to interfere in any manner, directly or indirectly, with the custody, possession,
12 management, or control by the permanent receiver of the funds, assets, collateral,
13 premises, and choses in action described above.

14 n. IT IS FURTHER ORDERED that defendants BCI, LFI, Carver,
15 Carver II, DeMers, and the Lincoln Entities shall pay the costs, fees and expenses
16 of the permanent receiver incurred in connection with the performance of his or her
17 duties described in this Order, including the costs and expenses of those persons
18 who may be engaged or employed by the permanent receiver to assist him or her in
19 carrying out his or her duties and obligations. All applications for costs, fees and
20 expenses for services rendered in connection with the receivership other than
21 routine and necessary business expenses in conducting the receivership, such as
22 salaries, rent and any and all other reasonable operating expenses, shall be made by
23 application setting forth in reasonable detail the nature of the services and shall be
24 heard by the Court.

25 o. IT IS FURTHER ORDERED that no bond shall be required in
26 connection with the appointment of the permanent receiver. Except for an act of
27 gross negligence, the permanent receiver shall not be liable for any loss or damage
28 incurred by any of the defendants or Relief Defendants, their officers, agents,

1 servants, employees and attorneys or any other person, by reason of any act
2 performed or omitted to be performed by the permanent receiver in connection
3 with the discharge of his or her duties and responsibilities.

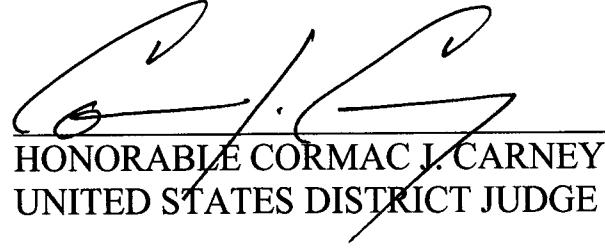
4 p. IT IS FURTHER ORDERED that representatives of the Commission
5 are authorized to have continuing access to inspect or copy any or all of the
6 corporate books and records and other documents of BCI, LFI, the Lincoln
7 Entities, and the other entities in receivership, and continuing access to inspect
8 their funds, property, assets and collateral, wherever located.

9 q. IT IS FURTHER ORDERED that, except as otherwise ordered by this
10 Court, defendants BCI, LFI, Carver, Carver II, and DeMers, and Relief
11 Defendants, and their officers, agents, servants, employees, attorneys, subsidiaries
12 and affiliates, including the other entities in receivership, and those persons in
13 active concert or participation with any of them, who receive actual notice of this
14 Order, by personal service or otherwise, and each of them, be and hereby are
15 preliminarily restrained and enjoined from, directly or indirectly: destroying,
16 mutilating, concealing, transferring, altering, or otherwise disposing of, in any
17 manner, any documents, which includes all books, records, computer programs,
18 computer files, computer printouts, contracts, correspondence, memoranda,
19 brochures, or any other documents of any kind in their possession, custody or
20 control, however created, produced, or stored (manually, mechanically,
21 electronically, or otherwise), pertaining in any manner to defendants BCI, LFI and
22 the Lincoln Entities, and their subsidiaries and affiliates.

23 r. IT IS FURTHER ORDERED that this Court shall retain jurisdiction
24 over this action for the purpose of implementing and carrying out the terms of all
25 orders and decrees which may be entered herein and to entertain any suitable
26 application or motion for additional relief within the jurisdiction of this Court.

27 IT IS SO ORDERED.
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1 DATED: June 19, 2008
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HONORABLE CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE